

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**BENJAMIN SMITH,**

**Plaintiff,**

**v.**

**No. 9:09-CV-729  
(TJM/DRH)**

**UNITED STATES OF AMERICA; DAN  
PETERSON, Factory Manager, FCI Ray  
Brook; SUSAN KEIFFER, Case Manager,  
FCI Ray Brook; FEDERAL CORRECTIONAL  
INDUSTRIES (UNICOR), FCI Florence,  
Florence, Colorado; MR. FELNER,  
Unit Manager, FCI Ray Brook; D.  
KIRKBY, Factory Foreman, FCI Ray Brook;  
MR. LUCAS, Case Manager, FCI Ray  
Brook; and T.R. CRAIG, Facility  
Superintendent, FCI Ray Brook,**

**Defendants.**

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**THOMAS J. McAVOY,  
Senior United States District Judge**

**DECISION & ORDER**

**I. INTRODUCTION**

This *pro se* action brought under Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), was referred to the Hon. Judge David R. Homer, United States Magistrate Judge, for a Report and Recommendation. No objections to the Report-Recommendation and Order dated February 3, 2011 have been filed, and the time to do so has expired. Furthermore, after examining the record, this Court has determined that

the Report-Recommendation and Order is not subject to attack for plain error or manifest injustice.

## II. CONCLUSION

Accordingly, the Court adopts the Report-Recommendation and Order for the reasons stated therein. It is therefore **ORDERED** that Defendants' motion for summary judgment (Dkt. No. 23) is **GRANTED IN PART AND DENIED IN PART**.

The motion is **GRANTED** as to the claims for:

- A. Interference with mail;
- B. Retaliation/false disciplinary reports;
- C. Eighth Amendment claim of inadequate medical care; and
- D. Product liability/negligence under the FTCA,

and these claims are **DISMISSED**.

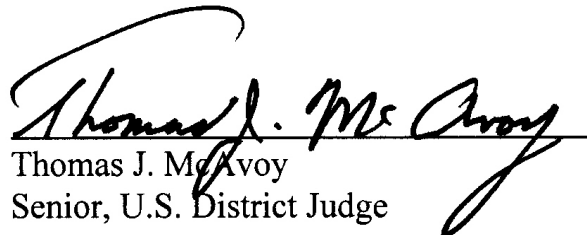
The motion is **DENIED** as to the claims for:

- A. A biased hearing officer; and
- B. Conditions of confinement.

Based on this determination, all defendants are **TERMINATED except Defendant Felner**.

**IT IS SO ORDERED**

DATED: March 1, 2011

  
Thomas J. McAvoy  
Senior, U.S. District Judge